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May 11, 2005

HAND DELIVERY
Charles L. A. Terreni, Esquire
Chief Clerk and Administrator
South Carolina Public Service Commission
101 Executive Center Drive
Columbia, SC 29210

RE: Generic Proceeding Established Pursuant to Commission Order No. 2004-466 to Address the Appropriate Rate Classification or Rate Structure for Telephone Lines Located in Elevators and for Telephone Lines Located in Proximity to Swimming Pools
Docket No.: 2005-15-C

Dear Mr. Terreni:

Enclosed please find the original and ten copies (10) of the Proposed Order filed on behalf of Sprint in the above referenced docket. By copy of this letter, I am serving all parties of record.

If you have questions, please do not hesitate to contact me.

Sincerely,

Elliott & Elliott, P.A.

Scott Elliott

SE/jcl

Enclosures

c: All Parties of Record w/enc.

ORIGINAL

BEFORE THE

PUBLIC SERVICE COMMISSION OF SOUTH CAROLINA

DOCKET NO. 2005-15-C – ORDER NO. _____

May ___, 2005

In Re:

Generic Proceeding Established Pursuant to Commission Order No. 2004-466 to Address The Appropriate Rate Classification or Rate Structure for Telephone Lines Located in Elevators and For Telephone Lines Located in Proximity to Swimming Pools	)	SPRINT'S PROPOSED ORDER

I. INTRODUCTION

In this generic proceeding, the Commission is asked to make a potentially significant change in what constitutes "residential" service versus what constitutes "business" service. Specifically, the heart of the matter appears to be whether customer usage should influence whether local service is classified as residential service, and thus entitled to the traditionally protected rate structure for residential customers, or whether the service is viewed as business service and priced at rates closer to incumbent local exchange companies' ("ILECs") true cost of service. Our determination in this matter could negatively impact the earnings of every ILEC in the state, indirectly encourage ILECs to file rate restructuring requests with the Commission, and ultimately diminish the value of the artificially low local exchange rates long offered to the residential telephone consumers of South Carolina. In this proceeding, we decline to take a first step down the road of altering the traditional and Commission-approved local rate classifications, and we decide to maintain the current *status quo*.

II. PROCEDURAL BACKGROUND

The present proceeding has its genesis in a prior Commission docket, No. 2003-221-C, upon the complaint of Rufus S. Watson, a member of the Bay Meadows Homeowners Association ("HOA") against Horry Telephone Cooperative, Inc. ("Horry") (a member of the South Carolina Telephone Coalition, or SCTC, a party to the present docket) and the procedural posture of that prior docket is discussed in our Order No. 2004-466, issued on October 5, 2004.[1] In both the prior proceeding and the present docket, Mr. Watson contends that the eight telephone lines[2] used to serve the elevators and pool located in the HOA's common areas should be assessed Horry's residential rates, and not the higher business rates. In Order No. 2004-466, we determined that due to the potentially far-reaching impact of the issues involved, the Commission's determination regarding Mr. Watson's and HOA's complaint should be held in abeyance, and in the ordering paragraphs of the above-referenced Order, we established a generic docket to "address the appropriate rate classification or rate structure for telephone lines which are required by code or regulation for safety or emergency use, such as telephone lines located in elevators and in proximity to swimming pools." Order No. 2004-466, at 7.

The Commission issued a Notice of Filing and Hearing in this matter on January 25, 2005. In addition to the complainant Mr. Watson, several parties intervened, including the SCTC, the Office of Regulatory Staff ("ORS"), Verizon South, Inc. ("Verizon"), United Telephone Company of the Carolinas and Sprint Communications Company L.P. (collectively, "Sprint"), BellSouth Telecommunications, Inc. ("BellSouth"), and the South Carolina Public Communications

1 See Order No. 2004-466 (issued October 5, 2004), at 1-2.
2 See Transcript of April 13, 2005 hearing ("Tr."), at 28 (Watson); 92 (Brooks).

Association ("SCPCA").

A public hearing was held in this matter on April 13, 2005. During the hearing, the complainant Rufus S. Watson, Jr. appeared and represented himself in this matter *pro se*. The ORS was represented by C. Lessie Hammonds. Verizon was represented by Steven W. Hamm. The SCTC was represented by John W. Bowen, and Margaret M. Fox. Sprint was represented by Scott Elliott and William R. Atkinson. BellSouth was represented by Patrick W. Turner. Finally, the SCPCA was represented by John F. Beach.

III. SUMMARY OF TESTIMONY

RUFUS S. WATSON, JR.

In both his prefiled statement,[3] and his live presentation before the Commission, Mr. Watson's testimony focused on three arguments: the HOA is a non-profit corporation and conducts no traditional business activities per se;[4] the telephones in question, which are in the elevators and near the pool on the HOA's premises, are required by law;[5] and the phones are rarely, if ever, used and have no access to toll.[6]

JAMES M. McDANIEL

Mr. McDaniel presented testimony on behalf of the ORS. In his testimony, Mr. McDaniel reported the results of a survey wherein ORS contacted the regulatory Commissions of other eight states in the nine-state BellSouth region and requested whether the telephone access lines in question

3 Docket No. 2005-15-C, Statement of Rufus S. Watson, Jr. (filed March 15, 2005) ("Watson Statement").
4 See Tr., at 13-14: "my position is and always has been, is that the Bay Meadows Homeowners Association is not a business, and the phones that are in its name are not used for business. Consequently, the Homeowners Association should not be charged the higher business rate."
5 Watson Statement, at 1.

would be assessed at business rates or residential rates. Seven of the eight Commissions responded to the survey, and all seven stated that business rates would be applied to telephones located near pools and in elevators. Tr., at 38; 53-54. Moreover, the Florida Public Service Commission ("FPSC") reported that it had addressed the identical issues in 1994 and that in the resulting Order, the FPSC determined the following:

> We find that LECs should be allowed to continue applying business rates to telephones located in condominium elevators. While we believe that calls made with these telephones will be made primarily by condominium residents, condominium associations use elevator phone service to fulfill legal obligations and enhance the safety of condominium residents. This includes meeting the requirement of installing a communications device in an elevator. This is a business activity and business rates should apply to a switched telephone line.

McDaniel Direct Testimony, Exhibit JMM-3, FPSC Docket No. 920837-TL, Final Order (issued September 27, 1994), at 7.

The ORS witness also noted that the evidentiary record and final Order from the prior proceedings in Docket No. 2003-221-C indicated that HOA's business rate was being provided by Horry at below cost, Tr., at 54, and that if the rates were reduced further, the level of subsidization required from other services would necessarily need to increase (in order to recoup the shortfall) . Tr., at 39-40. Regarding the End User Common Line ("EUCL") charge, the ORS witness viewed this as a mandatory federal surcharge over which this Commission has no jurisdiction. Tr., at 40, 48-49. Mr. McDaniel concluded his testimony by stating ORS' opinion, based on the witness's thirty years of experience in telecommunications[7] "that the public interest would be better served if the Commission continues the current application of business rates for access lines used to provide

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6 Watson Statement, at 2.
7 Tr., at 55 (McDaniel).

telephone services in elevators and in proximity of swimming pools at condominiums." Tr., at 40, 41; McDaniel Direct Testimony, at 5.

ORVILLE D. FULP

Mr. Fulp, testifying on behalf of Verizon, provided several supporting factors for his conclusion that telephones located in elevators and near pools should be charged the ILEC's business rates. First, Verizon's Commission-approved tariffs indicate that business rates should apply in connection with the telephones in question. Fulp Direct Testimony, at 3, 4; Tr., at 67-68. Second, and specifically with regard to Verizon, Verizon provides basic residential local service at below cost, and its business rates are closer to covering the cost of service than Verizon's residential rates. Fulp Direct Testimony at 3, 5. Accordingly, a Commission decision to move certain select business customers to the lower residential rate would mean that Verizon would not be covering its cost of service. Tr., at 68. Next, Mr. Fulp pointed out that South Carolina is not by any means the only jurisdiction in which business rates are charged for telephones in elevators and near pools, and that the regulatory Commissions in California and Florida found that business rates should apply to telephones in elevators. Fulp Direct Testimony , at 5-7; Tr., at 69. Finally, Mr. Fulp stated his opinion that applicable South Carolina regulations requiring emergency communications devices at pools apply only to public swimming pools and do not apply to residential pools. Similarly, South Carolina elevator regulations requiring two-way communications devices to be installed in elevators only apply to non-residential elevators. Fulp Direct Testimony, at 7-8.

DEBBY C. BROOKS

Ms. Brooks testified on behalf of the SCTC and Horry Telephone Cooperative. In her

testimony, Ms. Brooks stressed that the classification of local exchange telephone service as "residential" or "business" is based entirely upon the nature or character of use of the service, and not on the amount or frequency of usage. Brooks Direct Testimony, at 2-3; Tr., at 84. Ms. Brooks noted that in accordance with Horry's local tariff, business rates apply "for all places of a commercial, professional or business nature" such as emergency public telephones, and offices in hotels or apartments. Tr., at 84. Next, Ms. Brooks stated that Horry's business and residential rates are both priced substantially below the costs of providing the services, with residential rates recovering less of the actual cost of service than business rates. Brooks Direct Testimony, at 5; Tr., at 85. The witness then opined that a Commission-ordered local exchange rate reduction for homeowners' associations could lead to a "domino effect", with other non-profit corporations such as nursing homes and fraternal organizations arguing that they are similarly situated to HOA, and that this domino effect could spread to the ratepayers of other regulated utilities, such as electric, and water and sewer utilities. Brooks Direct Testimony at 4; Tr., at 85, 87. Ms. Brooks also stated her disagreement with the complainant's suggestion that non-profit corporations should not fall under ILECs' business classification. Horry itself is a nonprofit corporation and all incorporated associations rightly fall under the ILECs' business classification for local service. Brooks Direct Testimony, at 3; Tr., at 86.

JOHN E. MITUS

Sprint's witness, Mr. John E. Mitus, stated that there are already tools in place, such as the ILECs' Commission-approved local exchange tariff, for determining the appropriate class of service for a given customer. Mitus Direct Testimony, at 4-5; Tr., at 105. Mr. Mitus also characterized the

cost of the phones in question as "simply the cost of doing business as are the other safety measures that go along with having a public pool or public elevator." Mitus Direct Testimony, at 3; Tr., at 105. Finally, Sprint's witness testified that the cost of providing price breaks to selected groups would be borne by the utility's other ratepayers through "rate increases to cover the lost revenue or through additional surcharges via the USF fund." Tr., at 106.

CARLOS MORILLO

Testifying on behalf of BellSouth, Mr. Morillo stated BellSouth's policy that business rates should apply for the telephone lines in question, Morillo Direct Testimony, at 3-4, and the factors supporting this conclusion, including the fact that the phones are located in common areas of the HOA, and that the HOA is a nonprofit corporation. Morillo Direct Testimony, at 6; Tr., at 130. BellSouth's witness also called the Commission's attention to prior decisions of the Florida and California Commissions holding that business rates should apply for these types of telephones. Tr., at 130. In his prefiled testimony, the witness stated that BellSouth is not aware of any South Carolina code or regulation that would mandate the use of a landline telephone, as opposed to other communications devices, for emergency use in elevators and near public pools. Morillo Direct Testimony, at 3.

IV. OVERVIEW OF COMMISSION POLICY

In Orders and other formal statements of public policy, this Commission has consistently promoted and protected the basic (perhaps the most basic) regulatory concept of universal service, including the notion that ILECs fashion their rate structure so that residential basic local service is

generally priced at below cost, and that in order for ILECs to recoup this potentially harmful revenue deficit, other services, such as access and optional end-user services, are either priced significantly above cost, or as is the case with basic business (B1) service, priced at a closer approximation of its true cost. Mitus Direct Testimony, at 6. See also Docket No. 97-239-C, Order No. 2001-419 (issued June 6, 2001), at 26-27:

> Keeping in mind the social policy that rates for basic local service should remain affordable for all consumers, rate increases in business or long distance services have been favored over increases in basic residential rates whenever possible to keep local residential rates affordable for all South Carolina residents.

Tied to this working concept of universal service is the idea of keeping the class of end-users to whom below-cost service is provided as narrowly defined as possible and reserved for the true object of universal service and the preservation of high telephone penetration, namely the traditional single-family residential customer. Accordingly, a substantive policy change in what the Commission views as "residential" service versus what is seen as "business" service would be an important change, in that it has the potential not only to adversely impact ILEC revenues, but perhaps more importantly, to possibly erode the rate protections traditionally extended in this state to residential end-users due to corresponding ILEC requests for rate restructuring. As the Verizon witness stated during the hearing in this matter, the "practical aspect of changing this [policy] would be to essentially redefine Universal Service to include business customers, and a very select set of business customers. . ." Tr., at 69.

Based upon the pleadings filed in connection with this matter, and the evidence presented at the hearing on April 13, 2005, the Commission hereby makes the following findings of fact and conclusions of law:

V. FINDINGS OF FACT

1. HOA is incorporated and registered with the South Carolina Secretary of State as a non-profit corporation. Tr., at 21-22 (Watson), 56.

2. The telephone lines in question are located in the common areas of the HOA premises. Tr., at 55.

3. The telephone lines in question serve a business purpose in that they provide a safety benefit to HOA's members and keep in the HOA in compliance with applicable law and regulations. Tr., at 67-68, 71.

4. The Commission finds that HOA is not constrained by the applicable law and regulations to employ landline telephones in its elevators and near its pool, and the fact that landline telephones remain at these locations on HOA's premises as opposed to other available two-way communications devices represents a voluntary decision on the part of HOA.

5. The ILECs' Commission-approved local exchange tariffs set eligibility for residential service based on the nature and character of use with regard to the service in question, and not with regard to the amount or frequency of usage. See, e.g., Tr., at 67 (Fulp); Brooks Direct Testimony, at 2-3.

6. The ILECs in South Carolina could seek rate rebalancing from this Commission or additional USF funds in order to recoup any revenue shortfall incurred by the ILECs as a result of this proposed change in policy. Tr., at 106 (Mitus); Tr., at 85 (Brooks).

VI. CONCLUSIONS OF LAW

1. The Commission concludes that the ILECs' local exchange tariffs previously filed with and approved by this Commission properly require that telephones in elevators and in proximity to public pools located in homeowners' association common areas be assessed business rates, and not residential rates.

2. Based on the evidentiary record, the Commission concurs with the ORS witness[8] and concludes that it would not be just and reasonable ratemaking if the Commission were to require a change in customer classification that results in the body of South Carolina ratepayers incurring increased local exchange rates in order for the class of homeowners' associations in South Carolina to enjoy reduced rates for the telephones in question.

3. The Commission further concludes that since the EUCL charge complained of by Mr. Watson and HOA is a federally mandated surcharge, this Commission lacks jurisdiction to alter or prohibit the ILECs' assessment of the EUCL surcharge.

IT IS THEREFORE ORDERED THAT:

a. Mr. Watson's and HOA's complaint and request for relief is hereby denied.

b. The customer classification provisions of the ILECs' local exchange tariffs are valid as currently filed and remain in effect.

c. This generic proceeding is dismissed.

8 Tr., at 55 (McDaniel).

d. This Order shall remain in full force and effect until further Order of the Commission.

BY ORDER OF THE COMMISSION:

Randy Mitchell, Chairman

ATTEST:

O'Neal Hamilton, Vice-Chairman

(SEAL)

CERTIFICATE OF SERVICE

The undersigned employee of Elliott & Elliott, P.A. does hereby certify that she has served below listed parties with a copy of the pleading(s) indicated below by mailing a copy of same to them in the United States mail, by regular mail, with sufficient postage affixed thereto and return address clearly marked on the date indicated below:

RE: Sprint's Petition to Intervene in Generic Proceeding Established Pursuant to Commission Order No. 2004-466 to Address the Appropriate Rate Classification or Rate Structure for Telephone Lines Located in Elevators and for Telephone Lines Located in Proximity to Swimming Pools

DOCKET NO.: 2005-15-C

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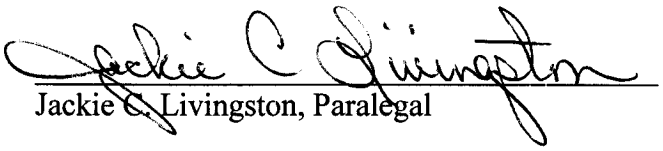
PLEADING: PROPOSED ORDER BY SPRINT

May 11, 2005



Jackie C. Livingston, Paralegal